

## Are Human Rights Universal?

Written by Joe Derry-Malone

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JOE DERRY-MALONE, OCT 4 2012

The issue of human rights is highly contested in international political theory and the way it is interpreted depends on both how any particular theorist understands moral obligation and international law distinctively and how the two concepts relate to each other in international relations. Questioning whether human rights are universal is a philosophical debate that depends on fundamental interpretations of what is right and, indeed, to what extent existing rights are accepted and enjoyed by all. The debate becomes even more complex, however, when examining the variant translations of values that emerge from these philosophies into practical politics. Within a world system comprised of diverse and often conflicting cultures and political viewpoints, attempting to universalise human rights into the international system is problematic and can appear contradictory. Although advances have been made in the move to codify human rights requirements at an international level, the subject remains imprecise with regards to both national obligation and the relationship between a respect for sovereignty and the justification of intervention on moral grounds.

In order to declare human rights universal in a practical sense, proof must be given not only towards their availability, but also towards their accessibility. This distinction has important implications within international relations, as it defines whether violations are an issue to be discussed within the international realm or one that must remain predominantly in the national domain. Using the atrocities of human rights violations within Latin America in the 20<sup>th</sup> Century as a point of analysis, this essay will assess the extent to which human rights are indeed universal within an international system that attempts to balance moral obligation with a respect for diversity and national sovereignty.

Within political theory, there are a number of viewpoints that claim the universal nature of human rights. Inherent to this strain of theory is the conviction that there are certain rights that 'one has simply because one is a human being' (Donnelly, 2002, p.12), stressing the similarities that humans share as members of a global community. Cosmopolitanism is just one theory within a wider school of thought that emphasises the need for an equality of 'legal rights and duties' between the 'fellow citizens of a universal republic' (Pogge, 1992, p. 49). At an international level, the way cosmopolitanism defines the universal nature of rights translates as a responsibility on behalf of the international community to ensure that human rights are upheld globally. With close links to deontology, in reference to 'the nature of human duty or obligation' (Shapcott, 2008, p. 194), the theory clearly advocates a moral duty in interstate relations. This argument has strong implications, suggesting that theoretically, if a government within a sovereign state were to ignore the universal human rights of their citizens, it would be morally legitimate for the international community to use necessary force to ensure that they are universally upheld.

An example of the adoption of such ideas can be seen by the defining arrest of Pinochet in 1998 'on an international warrant and extradition request from Spain' (Langer, 2011, p. 4). A further example was seen in 2007 when Fujimori was extradited from Chile in order to face trial in Peru. While the ability to arrest under universal jurisdiction is not mentioned explicitly in a codified form, various states have taken the initiative in interpreting such statutes 'to authorize and even require that the municipal courts assert universal jurisdiction' (Langer, 2011, p. 4), pushing the decision making process into the global arena. This direct translation from theory to practise demonstrates an important means of ensuring the universal nature of human rights and, indeed, represents the possibility of successfully widening the accessibility of human rights.

There are numerous theories however, that counteract cosmopolitanism by debating about the extent to which

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human rights can be universalised. These views develop from a contrasting conceptualisation of rights, contending that people do not inherit rights purely because they are human. Rather, they acquire them as members of a specific community. One of the most influential branches of this line of political thought is communitarianism. This theory highlights the 'fundamental differences among groups in their moral norms and values and accompanying world views' (Nickel, 1987, p. 69). The need for moral relativism in the face of these cultural differences means that it is impossible to create a definitive list of rights that are relevant and applicable to all. This can be seen as a moral theory in itself, as the dangers of universalising morality override any honourable intentions that, at a global level, are 'incompatible with a commitment to human rights' (Nickel, 1987, p. 69).

Within Latin America, for example, it is difficult to understate the extent of cultural divergence between indigenous communities and more urbanised decedents of European colonial powers. If differing cultural factors determine the relative definitions of human rights, then foreign powers would be unable to extend their own definition of these rights on others, since doing so would be ethnocentric in nature. Perhaps, liberal states must accept that they 'have no cosmopolitan duties to globalise their own conception of distributive justice' (Shapcott, 2008, p. 200) and that, in their very nature, rights are culturally dependent and far from universal.

Communitarianism is interesting in the way that it not only suggests that states do not have a responsibility to ensure the human rights of citizens who are part of other sovereign nations, but also in how it argues it is morally wrong to do so. Since 'the best ethics is one which preserves diversity over homogeneity' (Shapcott, 2008, p. 200), states must avoid the cultural imperialism of enforcing westernised definitions of human rights on nations in which these morals could hold little relevance. This implies that it is the responsibility of nation states, rather than the global community, to ensure that the culturally relevant rights of individual nations are upheld, for ensuring diversity internationally.

Nevertheless, this notion has dangerous implications regarding the reaction to human rights violations, as it assumes no convergence of rights at a global level. Furthermore, it 'denies the possibility of transcultural moral criticism' (Nickel, 1987, p. 71), assuming that all human rights violations are a result of cultural differences. An example of this could be the existence of competing 'mutually exclusive categories' (Cardenas, 2011, p. 53) within society, which could create a hierarchical social system that inherently limits cohesion. Comparable situations have been seen under the Chilean dictatorship with the persecution of political dissidents; in Argentina against left wing supporters of Perón; in the violence towards indigenous Peruvians; and in the dominance of the Maya in the victims of the Guatemalan conflict. This theory would suggest that, in such cases, human rights abuses were a result of internal clashes that arose from culturally specific situations that cannot be dealt with by a generalised approach. Considering that each violation occurs within different internal contests, the theory suggests that states must accept that human rights are culturally dependent and, therefore, not universal in any applicable sense.

The ambiguity of Human Rights declarations allows for an interpretation at a national level that, to some extent, avoids the criticisms of universal human rights as an over-generalising concept limiting independent solutions to independent violations. Article 3 of the Universal Declaration of Human Rights, for example, states the right to 'life, liberty and security of person' (1948). The absence of clear definitions of the terms used within statutory agreements leaves a degree of ambiguity that has to be translated and interpreted on a case by case basis, theoretically allowing cultural divergence to have effects on the implementation of varying rights in practise, yet still attempting to ensure a minimal basis for human rights universally. However, this ability to interpret and define rights is an issue that, in fact, limits their universal nature, as it liberates states from frameworks that were designed to ensure all people enjoyed access to agreed rights. The ability to interpret violations as they occur ultimately gives the international community the power to choose the limitations of involvement and, accordingly, if and when they are able to intervene in the affairs of other nations. By doing this, international law essentially permits the use of human rights as a justification to transcend national borders. However, without the obligation to deal with such violations, states will inevitably follow incentives that lie outside the realm of human rights prevention.

Following a realist interpretation of state motivation, nations will only intervene when they can see a means of explicit gain, and they will consequently interpret international declarations in a way that justifies such intervention. As Neumayer suggests, historically, the most developed of militarily powers 'are rarely consistent in their application of human rights standards to their foreign policy, and they are rarely willing to grant human rights questions priority'

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(2005, p. 926). This prioritisation is best illustrated by Cold War motives in the twentieth century. Whilst in Guatemala, 'human rights pressures led the Carter administration to impose conditions on U.S. aid' (Jonas, 1996, p. 148), their fear of Allende's ability to mobilise the Chilean proletariat led to the financial support of 'opponents of the government to sustain the organized resistance to Allende' (Goldberg, 1975, p. 110). In the Chilean case, economic and ideological motivations were enough to motivate an effect on U.S. foreign policy, whilst the agreeable economic aims of the military dictatorship (1973-1990) appeared to justify ignoring extensive human rights violations during the period. Until there is a stated obligation within the international community to intervene in the case of rights violation, states will intervene only when doing so does not contradict their own initiatives. They will, therefore, often ignore violations in cases where their own interests are already satisfied. This issue hugely limits the extent to which human rights can be considered truly universal in practise.

The lack of state obligation to intervene in other states regarding human rights violations frequently causes a dependence on internal solutions. The transference of responsibility to a national level, in effect, means a reversion to an international system in which entirely autonomous, sovereign states function independently from one another and, therefore, are solely responsible for addressing internal issues and avoiding violations. This is particularly damaging for the avoidance of human rights internationally, since 'sovereignty is typically the mantle behind which rights-abusive regimes hide when faced with international human rights criticism' (Donnelly, 2002, p. 108). To dispute this, cosmopolitan arguments would use the precedence of an international responsibility to avoid human rights violations over an unquestioned loyalty to Westphalian sovereignty. However, the political system that exists within nations continues to affect the extent to which human rights are respected, limiting further the claim to universal human rights in the current international structure.

The prevalence of internal factors in determining loyalty to human rights prevention renders certain systems more likely to violate the human rights of their citizens than others. Neumayer highlights the importance of democracy, suggesting that its absence is linked 'with more human rights violations' (2005, p. 926). This contrast between democracy and alternative forms of governance can be attributed to the control that dictators wield over all echelons of power. This characteristic has serious implications for limiting the accessibility to human rights and, consequently, the extent to which they are universal, as it is near impossible to control 'actors at the apex of the regime who concentrate the power to make and unmake rules' (Barros, 2001, p.8).

The influence of dictatorships over specific states is undeniable and represents a clear example of how human rights are not universal in practise, especially since dictators have the power to provide rights to some and restrict the rights of others. The Chilean constitution of 1980, for example, greatly strengthened the political hold of Pinochet over Chilean politics and enabled him to maintain power, despite extensive and public human rights violations within the period. Similarly, the Amnesty Law of 1978 'conformed with this model' (Borzutzky, 2007, p. 178) of dictatorial control, making violations easier, with security against reprimand having been made more secure. This example is mirrored in the extensive state sponsored violence perpetrated under Videla's military dictatorship in Argentina. The Peruvian example, though, places doubt regarding the direct link between dictatorship and violations on human rights, since it was after the period of dictatorship and within the democratic transition that Peru experienced its most brutal period of human rights violations. Although appearing to weaken the proposed link between liberal democracy and the preservation of human rights, and, accordingly, the influence of political systems on human rights prevention, this example has important implications for the universal nature of human rights, in a broader sense. Since violations can and do occur in democratic nations, there must be other factors acting internally that would cause or, indeed, catalyze violations. These internal factors are indisputably variable and affect each country differently, as can be seen from the contrasting causes within Latin America in the late twentieth century. Whilst the link between varying political systems and human rights remain arguable, internal factors of specific countries do undeniably continue to affect, in a dramatic sense, the extent to which human rights abuses are avoided. While this variation persists, the accessibility of human rights will vary hugely internationally, damaging any claim that human rights are universal in any practical sense.

The legality of human rights in the international arena is as contradictory and ambiguous as it is at national level. Whilst frameworks such as the United Nations Commission on Human Rights (United Nations Human Rights Council since 2006) existed throughout this period of extensive violations in Latin America, Donnelly argues that the way

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these structures are perceived, as beyond national constitutions, limits their effectiveness. He identifies that in most countries 'it is striking how far one can go before human rights arguments become necessary' (2002, p.13). In some states, these rights are constitutionally enshrined, and, therefore, one does not need to make any claim to higher international powers that reach above the hold of the state. Again, this highlights the inequalities between states because their differing constitutions are commonly used as a first resort for dealing with violations, whilst the way in which they do this varies immensely.

International law also fails to provide a consensual understanding of universal human rights, in a further sense. The Universal Declaration of Human Rights (1948) states in article two that:

*"no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty."*

This would, in theory, give legality to any state willing to intervene to enforce the human rights that all citizens are theoretically entitled to, with the naming of human rights as the motivator with the most priority in international politics. The problem occurs, however, with the contradictions of international law. Article 55 of The UN Charter, for example, states the importance of 'self determination' (1945), namely the ability to politically manage one's own affairs within their jurisdiction. This could justify the role of independent states in deciding the extent to which human rights are upheld, a dangerous idea considering the integral role of dictatorships and the overwhelming prominence of state sponsored violence in nations such as Argentina, Chile and Guatemala. For this reason, international law is often difficult to consult, as it stipulates a need for respecting a state's independence in human rights affairs, but also the ability to bypass this sovereignty if necessary. According to Anderson, '[c]itizens' perceptions of human rights conditions in a country are systematically related to that country's actual conditions of government repression' (2002, p. 439). If this were true, then, perhaps, states should be entitled to override the sovereignty of a state if it is the sovereign ruler who is neglecting to provide the entitled rights to their citizens. The issue, though, again lies with the ability of states to interpret their own obligations within the ambiguous statutory. This ultimately means that the possibility to universalise human rights using international law as a legitimate justification remains impossible. Until this matter is clarified within the statutes that guide state behaviour, accessibility to human rights will continue to vary between nations.

The way states relate to one another is central to the question of whether human rights are universal. During the twentieth century, this relationship has changed dramatically with regards to culture, economics, immigration and justice. Inevitably, how human rights are conceptualised and implemented has been affected. The growth of globalisation has created an economic interdependence that causes international problems, necessitating global solutions to combat them. As a reaction, globalisation has also taken its toll in the political sphere, with NGOs capturing 'considerable institutional space as governments restructure' (Keese, 2006, p. 115) to reflect the new global solutions required at an international level. The translation of decisions, previously internalised within nations, into the international arena has caused a 'state power decline as transnational decision making increasingly takes precedence over national decision-making processes' (Evans, 2001, p. 626).

The significance of NGOs has had profound effects on the possibility of maximising accessibility to human rights globally. With links to arguments concerning universal jurisdiction, NGOs represent a means of lessening border significance, therefore, limiting the extent to which internal variables facilitate human rights abuses. This is most evident in examples following periods of violence and violation in Latin America. In Uruguay, for example, NGOs played a huge part in pushing for truth commissions demonstrating an influence that would be effective in bypassing any impunity enshrined by regimes that are themselves perpetrators of human rights violations. Working simultaneously, universal jurisdiction and the rise of NGOs are mutually beneficial and demonstrate a means of holding perpetrators to account, without damaging the international order in the way that state intervention could. Borzutzsy notices this, highlighting the fact that Pinochet's arrest in London 'energized the human rights NGOs' (2007, p. 179). This process means that as globalisation intensifies, NGOs will, in theory, continue to become more effective, justifying the conclusion that accessibility to human rights will increase and maximising the universal nature of such rights.

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The concept of Human Rights is incredibly important in international relations, as it is inherently linked to ideas of sovereignty, justice and responsibility. As has been seen in Latin America, human rights violations are neither formulaic nor predictable. Philosophers remain inconclusive and divided regarding the extent to which human rights are universal, with opinions that are determined by distinct conceptualisations of justice and responsibility. Within practical international relations, however, it appears obvious that human rights are currently far from universal, as their accessibility is limited to certain nations and repeatedly restricted from others. This inequality should alert the international community to the importance of addressing the issue. This could be done in two very distinct ways. In order to address the issue of variation in accessibility to human rights between nations, the international community must enshrine an obligation towards humanitarian intervention so as to avoid the ability of states to place ulterior motives with precedence over a protection of human rights. This is already being seen with the growing acceptance of universal jurisdiction in the international realm and also, significantly, with the growing importance of NGOs focussed on human rights protection. Secondly, rather than stagnating international relations, nations must accept their moral obligations to promote human rights and translate their interdependence in the realm of the economy to the one of humanitarianism. They must allow human rights to play a role in relations between states, accepting the responsibilities to promote human rights that the international community has pledged to fulfil. If this does not occur and states continue to overlook catastrophes similar to those witnessed in Latin America, any claims to universal human rights will remain hugely undermined.

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*Written by: Joe Derry-Malone*  
*Written at: University of Leeds*  
*Written for: Cara Levey*  
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